

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: DEALER MANAGEMENT SYSTEMS
ANTITRUST LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 2817
Case No. 18-cv-00864

Hon. Robert M. Dow, Jr.
Magistrate Judge Jeffrey T. Gilbert

PUBLIC-REDACTED

**MDL PLAINTIFFS' RESPONSES TO DEFENDANTS CDK GLOBAL, LLC'S AND
THE REYNOLDS AND REYNOLDS COMPANY'S STATEMENT OF
ADDITIONAL MATERIAL FACTS IN OPPOSITION TO MDL PLAINTIFFS'
MOTIONS FOR SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIMS**

GLOSSARY

Abbreviation	Title	Dkt.
RSUF	Counterclaimant The Reynolds and Reynolds Company's Statement of Undisputed Material Facts In Support of Its Motion For Partial Summary Judgment (Oct. 15, 2019)	Dkt. 779
Dealers' SOF	Dealership Counter-Defendants' Statement of Undisputed Material Facts In Support of Their Motion For Summary Judgment On CDK Global, LLC's Counterclaims	Dkt. 968
DJ SUF	Defendants CDK Global, LLC's and The Reynolds and Reynolds Company's Joint Statement of Common Undisputed Material Facts In Support of Their Motions for Summary Judgment (May 20, 2020)	Dkt. 974
ACOM SUF	Plaintiff Authenticom, Inc.'s Statement of Undisputed Material Facts In Support of Its Motion for Summary Judgment On Defendants' Counterclaims (May 20, 2020)	Dkt. 977
Resp. ACOM SUF	Response of Defendants CDK Global, LLC and The Reynolds and Reynolds Company to Plaintiff Authenticom, Inc.'s Statement of Undisputed Material Facts In Support of Its Motion for Summary Judgment On Defendants' Counterclaims (July 28, 2020)	Dkt. 1058
CDK RSUF	CDK Global, LLC's Responses to Plaintiff AutoLoop's Rule 56.1 Statement In Support of Its Motion for Summary Judgment On CDK Global, LLC's Counterclaims (July 28, 2020)	Dkt. 1059
DJ SAF	Defendants CDK Global, LLC's and The Reynolds and Reynolds Company's Statement of Additional Material Facts In Opposition to MDL Plaintiffs' Motions for Summary Judgment On Defendants' Counterclaims (July 28, 2020)	Dkt. 1062
PJ RSUF	MDL Plaintiffs' Responses to Defendants CDK Global, LLC's and The Reynolds and Reynolds Company's Joint Statement of Common Undisputed Material Facts In Support of Their Motions for Summary Judgment (July 28, 2020)	Dkt. 1070
ACOM RSUF	Plaintiff Authenticom, Inc.'s Responses to Counterclaimant's The Reynolds and Reynolds Company's Statement of Undisputed Material Facts In Support of Its Motion For Partial Summary Judgment (July 28, 2020)	Dkt. 1082
PJ SAF	MDL Plaintiffs' Corrected Statement of Additional Material Facts In Opposition to Defendants' Motions for Summary Judgment (July 28, 2020)	Dkt. 1101

Abbreviation	Title	Dkt.
PJ RSAF	MDL Plaintiffs' Responses to Defendants CDK Global, LLC's and The Reynolds and Reynolds Company's Statement of Additional Material Facts In Opposition to MDL Plaintiffs' Motions for Summary Judgment On Defendants' Counterclaims	This document (Dkt. number pending)
Dorris Ex.	Authenticom Exhibits to the Declaration of Daniel V. Dorris (May 20, 2020)	Dkt. 977-1
Dorris AL Ex.	AutoLoop Exhibits to the Declaration of Daniel V. Dorris (May 20, 2020)	Dkt. 950-1
Ho Ex.	MDL Plaintiffs' Exhibits 1-503 to the Declaration of Derek T. Ho (July 28, 2020); and MDL Plaintiffs' Exhibits 504-521 to the Declaration of Derek T. Ho (Aug. 28, 2020)	Dkt. 1069-1 & Filed concurrently
Fenske Ex.	Exhibits to the Declarations of Daniel T. Fenske (May 20, 2020 & July 28, 2020)	Dkts. 975, 979, 1064 & 1065
Dealers' Ex.	Exhibits to the Declaration of Peggy J. Wedgworth (May 20, 2020)	Dkts. 958-1
Wedgworth Ex.	Exhibits to the Declaration of Peggy J. Wedgworth (July 28, 2020)	Dkt. 1083
Wilkinson Ex.	Exhibits to the Declaration of Brice Wilkinson (July 28, 2020)	Dkt. 779-1
Dealers' Add'l Ex.	Exhibits to the Declaration of Peggy J. Wedgworth	Filed concurrently

MDL PLAINTIFFS' RESPONSES

ACA Motors, Inc., d/b/a Continental Acura; Baystate Ford Inc.; Cherry Hill Jaguar; Cliff Harris Ford, LLC, d/b/a Warrensburg Ford; Continental Autos, Inc., d/b/a Continental Toyota; Continental Classic Motors, Inc., d/b/a Continental Autosports; 5800 Countryside, LLC, d/b/a Continental Mitsubishi; HDA Motors, Inc., d/b/a Continental Honda; H & H Continental Motors, Inc., d/b/a Continental Nissan; JCF Autos LLC, d/b/a Stevens Jersey City Ford; Jericho Turnpike Sales LLC, d/b/a Ford & Lincoln of Smithtown; Marshall Chrysler Jeep Dodge, L.L.C., d/b/a Marshall Chrysler Jeep Dodge Ram; Naperville Zoom Cars, Inc., d/b/a Continental Mazda; NV Autos, Inc., d/b/a Continental Audi; Patchogue 112 Motors, LLC, d/b/a Stevens Ford; Waconia Dodge, Inc.; Warrensburg Chrysler Dodge Jeep, L.L.C., d/b/a Warrensburg Chrysler Dodge Jeep Ram Fiat (collectively, "Dealership Counter-Defendants") and Authenticom, Inc. and Loop, LLC d/b/a AutoLoop, (collectively, "Individual and Vendor Class Plaintiffs"), respond as follows to Defendants CDK Global, LLC's ("CDK") and The Reynolds and Reynolds Company's ("Reynolds") (collectively, "Defendants") Joint Statement of Additional Material Facts in Support of their Oppositions to Plaintiff Authenticom, Inc.'s Motion for Summary Judgment on Defendants' Counterclaims, Dealership Counter-Defendants' Motion for Summary Judgment on CDK Global, LLC's Counterclaims, and Plaintiff AutoLoop's Motion for Summary Judgment on CDK Global, LLC's Counterclaim (Dkt. 1062).

By conceding that a fact is undisputed pursuant to Local Rule 56.1, MDL Plaintiffs do not concede any argument regarding the admissibility or sufficiency of any specific evidence, the materiality of any fact asserted, or the legal significance of any fact or evidence. MDL Plaintiffs expressly reserve their right to challenge any fact or evidence Defendants proffer at trial

regardless of whether it is disputed in these Responses. *See, e.g., Brown v. Navarro*, 2012 WL 3987427, at *3 (N.D. Ill. Sept. 11, 2012).

I. Defendants' DMS Licenses

1.

- 2 -

[REDACTED]

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Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants (either in CDK’s Opposition to Dealership Counter-Defendants’ Motion for Summary Judgment (Dkt. 1057), in sections of other briefs that CDK’s Opposition incorporated by reference, or in sections of CDK’s and Reynolds’s Oppositions responding to the sections of Authenticom’s Memorandum of Law (Dkt. 978) that Dealership Counter-Defendants’ opening brief (Dkt. 965) incorporated by reference). Accordingly, because this factual assertion does not “require the denial of summary judgment” with respect to Dealership Counter-Defendants’ motion (*see* Local Rule 56.1(b)), Dealership Counter-Defendants offer no response. *See also* Exhibit ZZZ to the Declaration of Peggy Wedgworth in Further Support of Dealership Counter-Defendants’ Motion for Summary Judgment on CDK Global, LLC’s Counterclaims (“Dealers’ Add’l Ex.”), Fenske Email dated 8/14/2020 (“If a statement in the JSOAF does not meet one of these criteria, we agree that no response from the Dealership Counter-Defendants is necessary”); *Brotherhood of Maint. of Way Emps. Div./IBT v. Norfolk S. Ry. Co.*, 2012 WL 4461690, at *5 (N.D. Ill. Sept. 25, 2012) (“The purpose of Local Rule 56.1 statements of facts is to identify the relevant admissible evidence supporting the material facts that each party contends require either the granting or the denial of summary judgment.”).¹

¹ The Individual and Vendor Class Plaintiffs similarly do not respond to facts that were not asserted against them.

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II. Authenticom Is Not The Dealer's "Agent"

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10. DealerVault's standard dealer contract gives DealerVault the right to "implement mechanisms to screen, monitor, modify, and remove any Dealership Data or other content posted or stored on the Services or transmitted through the Services, at any time and without notice." [REDACTED]

Individual and Vendor Class Plaintiffs' Response: Undisputed that the DealerVault contract contains the quoted language; the contract speaks for itself.

Dealership Counter-Defendants' Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

11. That contract also gives DealerVault the right to "establish, and to update and otherwise modify, limitations upon the use of the Services from time to time upon written notice to Dealership. For example, DealerVault may implement a maximum amount of memory or other computer storage, a maximum amount of Dealership Data that Dealership may store, post or

transmit on or through the Services, and limitations on the size, frequency, timing, or other manner of messages transmitted using the Services.” *Id.* § 3.4.

Individual and Vendor Class Plaintiffs’ Response: Undisputed that the DealerVault contract contains the quoted language; the contract speaks for itself.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

12. Under that contract, dealers are prohibited from “reverse engineer[ing] . . . or otherwise attempt[ing] to discover the . . . underlying DealerVault Technology,” *id.* § 2.2, meaning dealers are prohibited from even attempting to learn, much less controlling, specific technological methods Authenticom uses to poll data.

Individual and Vendor Class Plaintiffs’ Response: Undisputed that the DealerVault contract contains the quoted language; the contract speaks for itself. Disputed that a prohibition on “reverse engineering” – which means to disassemble a device to ascertain its inner workings, typically for the purpose of creating a similar device – would restrict dealers from learning about Authenticom’s service or would restrict dealers’ ability to exercise control over that service.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

13. Under that contract, DealerVault may establish “additional terms and conditions [that] may be set forth in policies, guidelines, and similar documents that may be posted on the

Services or otherwise made available to Dealership from time to time. Dealership must comply with any and all such policies and guidelines, all of which are incorporated into these Terms and Conditions.” *Id.* § 3.7; [REDACTED]

Individual and Vendor Class Plaintiffs’ Response: Undisputed that the DealerVault contract contains the quoted language; the contract speaks for itself.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

14. Under that contract, DealerVault may “update, change or replace any part of these Terms of Service by posting updates and/or changes to our website” and it is the Dealer’s “responsibility to check this page periodically for changes.” [REDACTED]

Individual and Vendor Class Plaintiffs’ Response: Undisputed that the DealerVault contract contains the quoted language; the contract speaks for itself.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response)

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III. Authenticom Has Accessed, Extracted, or Sold More Data Than The Dealer Purported To Authorize

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47. The data extractor Superior Integrated Solutions sued Reynolds in 2009 claiming, among other complaints, that Reynolds’s technological measures were sufficiently disruptive as to tortiously interfere with Superior’s business relationships with vendors and seeking an injunction prohibiting Reynolds from continuing to remove or disable its “integration software.” *Superior Integrated Solutions, Inc., v. The Reynolds and Reynolds Company*, 2009 WL 3663339 (S.D. Ohio) (complaining that Reynolds was “blocking or removing SIS’s integration software”).

Individual and Vendor Class Plaintiffs’ Response: Undisputed that SIS sued Reynolds for, among other things, tortious interference from “blocking or removing SIS’s integration software.” Disputed that this was accomplished by “technological measures,” as the cited complaint does not allege the means of Reynolds’s “blocking or removing.”

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

48. [REDACTED]

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V. Defendants' Technological Measures Controlled Access To Copyrighted Works

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

65.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

66.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. Dealers Acknowledge Defendants' Ownership Of Their DMSs

67.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

69.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VII. DealerBuilt Incident

70. In 2016, hackers breached the DealerBuilt DMS and extracted almost 10 gigabytes of data containing social security numbers, driver's licenses, credit card numbers, and other sensitive data for thousands of consumers. *See* Defs. Add'l Ex. 551, DealerBuilt 30(b)(6) (Trasatti) Tr. 24:19-26:20; Defs. Add'l Ex. 449, Jackie Charinga, Hackers gained access to customer data at 130 dealerships, FTC says, Automotive News (June 12, 2019), <https://www.autonews.com/dealers/hacker-gained-access-customer-data-130-dealerships-ftc-says>. As a result of the incident, DealerBuilt was the subject of a Federal Trade Commission action and entered into a settlement with the State of New Jersey, requiring among other things that DealerBuilt maintain "enforcement mechanisms to approve or disapprove access requests based on [its] policies"; and suffered significant reputational harm. Defs. Add'l Ex. 458, In re LightYear Dealer Technologies, LLC, FTC File No. 172 3051, C-4687, Decision and Order (FTC Sept. 3, 2019); Defs. Add'l Ex. 579, In re LightYear Dealer Technologies, LLC, Atty. Gen. of New Jersey, Consent Order (May 21, 2018); Defs. Add'l Ex. 551, DealerBuilt 30(b)(6) (Trasatti) Tr. 71:13- 73:5.

Joint MDL Plaintiffs' Response: Disputed in part. Undisputed that the DMS provider DealerBuilt experienced a security breach in 2016. Disputed that "hackers breached the DealerBuilt DMS"; rather, DealerBuilt "misconfigured" a back-up server within the DMS, which publicly exposed consumer files. Defs. Add'l Ex. 579 at 2. Disputed insofar as this Statement is intended to suggest that the DealerBuilt breach was the result of, or had any relation to, DealerBuilt's policies with respect to data integrators. The DealerBuilt incident had no relation to Authenticom. [REDACTED]

[REDACTED]

[REDACTED]

71. _____

[illegible]

72. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

73. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

74.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75.

A series of horizontal black bars of varying lengths, some starting from the left edge and others indented, creating a rhythmic, abstract pattern. The bars are arranged in a sequence that suggests a list or a series of data points, with some bars being full-width and others being shorter and offset.

76.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

80.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[illegible]

[REDACTED]

82. Open Secure Access issued Guidelines that suggest that third-party data extractors adopt “written security polic[ies]” and “incident response plan[s].” [REDACTED]

[REDACTED]

Individual and Vendor Class Plaintiffs’ Response: Disputed in part. Undisputed that Open Secure Access issued data security guidelines that recommended third parties create a “written security policy.” Defs. Add’l Ex. 520 at SIS0007992. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dealership Counter-Defendants' Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

83. The Guidelines further stated that a vendor should “not store Dealer Data for longer than is reasonably necessary to provide Third Party’s product or service.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Individual and Vendor Class Plaintiffs' Response: Disputed in part. Undisputed that the Open Secure Access guidelines contain the quoted statement. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dealership Counter-Defendants' Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

84. The Guidelines further required that vendors “encrypt the transmission of any sensitive information sent over the public internet,” Defs. Add'l Ex. 520, DX 716 (SIS0007991) at -996, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Individual and Vendor Class Plaintiffs' Response: Disputed in part. Undisputed that the Guidelines contain the quoted statement. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

85. The Guidelines further indicated that the vendors had a responsibility to protect “sensitive information,” including “address information,” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Individual and Vendor Class Plaintiffs’ Response: Disputed in part. Undisputed that the Guidelines contain the quoted statement. [REDACTED]

[REDACTED]

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

X. Miscellaneous Additional Facts

[REDACTED]

[REDACTED]

**CDK'S STATEMENT OF ADDITIONAL MATERIAL FACTS
IN OPPOSITION TO DEALERSHIP COUNTER-DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

I. CDK's Master Services Agreements With Dealership Counter-Defendants

87. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

89.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

II. Dealership Counter-Defendants' Interrogatory Responses.

90. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

91.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

III. The Automotive Industry Recognizes The Potential For Reputational and Other Harms From Security Breaches

92.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93. According to the FTC, the DealerBuilt security breach was detrimental to the public interest. *See* Defs. Add'l Ex. 448, In re LightYear Dealer Technologies, LLC, FTC File No. 172 3051, C-4687, Proposed Compl. ¶ 16-20 (FTC Sept. 3, 2019) (“[b]reached personal information, such as that stored in Respondent’s backup database, is often used to commit identity theft and fraud,” that “stolen financial information, such as the credit card numbers, expiration dates, and security codes that Respondent holds, can be used to commit fraud”; dealers incurred “many hours handling breach response communications, identifying affected consumers, and responding to consumer complaints; and the breach was “likely to cause substantial injury to consumers and small businesses in the form of fraud, identity theft, monetary loss, and time spent remedying the problem”).

Dealership Counter-Defendants’ Response: Disputed in part. Undisputed that the exhibit is accurately quoted. Disputed as unsupported insofar as the exhibit cited contains no statement from the FTC that “the DealerBuilt security breach was detrimental to the public interest.”

IV. The Continental Dealer-Defendants

94. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

95.

[REDACTED]

[REDACTED]

[REDACTED]

96.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

97.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

98.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

V. The Warrensburg Counter-Defendants

99. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I. CDK's DMS & 3PA Program

104.

A horizontal bar chart consisting of ten rows. Each row contains a solid black rectangular bar. The bars vary in length, with some being nearly full-width and others being significantly shorter or longer than the ones above or below them. The entire chart area is obscured by black redaction boxes.

105. [REDACTED]

[REDACTED]

[REDACTED]

A series of horizontal black bars of varying lengths, some starting from the left edge and others indented, creating a rhythmic, abstract pattern. The bars are arranged in a sequence that suggests a list or a timeline, with some bars being significantly longer than others. The overall effect is one of stark contrast and geometric simplicity.

106. Vendor applications certified in the 3PA program receive “bi-directional” (write-back) and real-time integration with the CDK DMS through “Pre-Defined Integration Points,” also called “PIPs,” which are configured to each application’s requirements and which “limit[] access to only those services and data elements (vehicles, customers, financials, parts, service) necessary for the application.” Defs. JSUF Ex. 102, H. Gardner Decl. [Auth. Dkt. 93] ¶¶ 5-9; Defs. JSUF Ex. 173, CDK-2442871 at 5.

Individual and Vendor Class Plaintiffs’ Response: Disputed in part. Undisputed that some vendors in the 3PA program can pay for “bi-directional” or “write-back” integration at a

price that often exceeds \$700 on a per-rooftop, per-month basis. *See* PJ SAF 72. Disputed that CDK has offered “real-time integration.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Disputed that CDK provides the data elements “necessary for the application” through the 3PA program; CDK denies 3PA vendors important data functionality that is necessary for the applications to operate as intended. [REDACTED]

[REDACTED]

[REDACTED]

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

[illegible]

[REDACTED]

111. CDK markets the 3PA program as a secure interface that requires transparency and accountability in how third-party software vendors access and use data maintained in the CDK DMS, [REDACTED]; *see also* Defs. Add'l Ex. 564, Data Management, CDK Global, <https://www.cdkglobal.com/us/automotive/dealership-operations/data-management> (“Share Data With Confidence: Dealerships depend on the secure exchange of data, be it with OEMs, partners, other locations or even customers. Make these exchanges easier to follow. With CDK solutions, real-time updates inform you on where your data has been, where it is now, and where it’s going to be.”); *id.* (“As dealership integrations become more and more complex, the amount of data that goes back and forth between dealerships, OEMs and third-party systems increases. With our data management systems, dealerships have effective tools to ensure secure, productive operations.”).

Individual and Vendor Class Plaintiffs’ Response: Undisputed that CDK markets 3PA in this manner, but disputed that such marketing is accurate. *See supra* PJ RSUF 109-110.

Dealership Counter-Defendants' Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

112. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

113. CDK's public filings have consistently identified any perceived lack of security in its services as a material risk to its business. *See, e.g.,* [REDACTED]

[REDACTED]

Individual and Vendor Class Plaintiffs' Response: Undisputed.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

II. AutoLoop’s Participation in the 3PA Program

114.

- 100 -

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

117.

118.

119.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

120.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

121.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. vAuto-AutoLoop Syndication

122. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

123.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

124.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

125.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

126. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

128. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11/11/2016

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

130. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

131. AutoLoop continues to advertise Quote’s “strategic integrations through . . . vAuto®.” Defs. Add’l Ex. 541, <https://www.affinitiv.com/sales/quote/>.

Individual And Vendor Class Plaintiffs’ Response: Undisputed.

Dealership Counter-Defendants’ Response: This factual assertion is not cited by CDK in any arguments raised against Dealership Counter-Defendants, and Dealership Counter-Defendants offer no response. *See supra* PJ RSAF 1 (Dealer Response).

Dated: August 28, 2020

Respectfully submitted,

/s/ Peggy J. Wedgworth

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MDL Co-Lead Counsel

CERTIFICATE OF SERVICE

I, Derek T. Ho, an attorney, hereby certify that on August 28, 2020 I caused a true and correct copy of the foregoing **MDL PLAINTIFFS' RESPONSES TO DEFENDANTS CDK GLOBAL, LLC'S AND THE REYNOLDS AND REYNOLDS COMPANY'S STATEMENT OF ADDITIONAL MATERIAL FACTS IN OPPOSITION TO MDL PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT ON DEFENDANTS' COUNTERCLAIMS** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system. Copies of the Under Seal filing were served on counsel of record via email.

/s/ Derek T. Ho
Derek T. Ho
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